

CIVIL RIGHTS COMPLAINT

42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

x

LEROY WHITLEY, #09-A-2462,
PLAINTIFF,

-against-

P.O. DUDLEY EWALD, N.Y.P.D., 70th. Pct.,
A.D.A. JILL OZIEMBLEWSKI, KINGS COUNY D.A. OFFICE,
A.D.A. KERRY PUCKHABER, KINGS COUNTY D.A. OFFICE,
A.D.A. BIALO' PADIN, KINGS COUNTY D.A. OFFICE,
D.A. CHARLES HYNES, KINGS COUNTY DISTRICT ATTORNEY,
et. alii., ALL OTHERS ACTING IN CINCERT,
DEFENDANTS.

x

Previous Lawsuits:

A. Hvae you begun ~~other~~ lawsuits in State or Federal Court dealing
with the same facts involed in this action? YES(X) NO()

B. If you answered Yes to "A", describe each Lawsuit in the space below.

1. Parties to previous Lawsuit:

Plaintiff: LEROY WHITLEY

1600-HAZEN STREET, QUEENS, N.Y., 11370

DEFENDANTS: P.O. DUDLEY EWALD, N.Y.P.D., 70th.-
Pct., 154-LAWRENCE STREET, BROOKLYN N.Y., 11230.
STATE OF NEW YORK, PARA-LEGAL MARTA KUKLIK,
A.D.A. LAREN HERSH, A.D.A. L. BRONSTIEN, A.D.A.-
JILL OZIEMBLEWSKI, et. alii., ALL OTHERS ACTING-
IN CONCERT.

08-W-4202

JURY TRIAL DEMANDED

YES XX NO

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG - 9 2010 ★

BROOKLYN OFFICE

2. Court: UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK,
225-CADMAN PLAZA-EAST, BROOKLYN, N.Y., 11201

3. DOCKET NUMBER: 08-CV-4202(RRM)(LB).

4. NAME OF JUDGE TO WHOM THE CASE WAS ASSIGNED:
Magistrate Judge, Luis Bloom

5. DISPOSITION: Part was conceded (KINGS COUNTY IND. #3930/2006, by the
Plaintiff) Part (KINGS COUNTY IND.# 12111/2007) still pending.

6. APPROXIMATE DATE OF FILING OF THE LAWSUIT: OCTOBER 09,2008

7. APPROXIMATE DATE OF DISPOSITION: N/A

II. PLACE OF PRESENT CONFINEMENT: N.Y.S. D.O.C.S. at; LIVINGSTON CORRECTIONAL FACILITY,
P.O. BOX-91, SONYEA, N.Y., 14556

A. IS THERE A PRISONER GRIEVANCE PROCEEDURE IN THIS INSTITUTION?:
YES(X) NO()

B. DID YOU PRESENT THE FACTS RELATING TO YOUR COMPLAINT IN THE PRISONER-
GRIEVANCE PROCEEDURE?: YES() NO(X)

C. IF YOUR ANSWER IS YES, WHAT STEPS DID YOU TAKE? I filed several motions.

D. WHAT WERE THE RESULTS?: KINGS COUNTY INDICIMENT # 3930/2006 was dismissed
Pursuant to C.P.L. § 30.30(1)(a), Whereupon, the People appealed, and the Indictment
was reinstated, the Plaintiff was convicted upon a plea...KINGS COUNTY-
INDICIMENT # 12111/2007 is still pending in the 4th. Department, Appellate-
Division, upon a Non-Jury Trial of the Plaintiff, Pursuant to Direct Appeal.

E. IF YOU ANSWERED NO, EXPLAIN WHY NOT?:

1. On or about: DECEMBER 05,2007, The Plaintiff was arrested on Felony Complaint- # 2007KN091364...The basis of the Felony charges in said Complaint were an Order of Protection that was issued on: MAY 31,2005, Pursuant to DOCKET # - 2005KN0287746. In that the Plaintiff was convicted of Criminal Contempt in the 2nd. Degree (P.L. § 215.50) and was porported to be in effect until MAY-31,2008...This is incorrect...it was actually only in effect until: MAY 31,2006.
2. At the Plaitiff's arraignment, A.D.A. KERRY PUCKHABER, informed the arraignment-Part Judge that he had in his possession, an bench warrent for the Plaintiff's direct appearance (C.P.L. § 530.70) returnable to the Hon. Mathew D E'mic, issued under Indictment # 3930/2006 (WHICH WAS DISMISSED: NOVEMBER 19,2007, PURSUANT TO C.P.L. § 30.30(1)[a]). MOREOVER, the Protective Order that was used in Felony Complaint #2007KN091364 was not for a "domestic offense", nor was the Complaintant a "victim of a crime" (C.P.L. § 530.13) FURTHERMORE, The Protective Order in question had in fact expired on: MAY 31,2006...
(SEE: SENTENCING MINUTES, THAT WERE ATTACHED TO THE PLAINTIFF'S ORIGINAL COMPLAINT)
3. Subsequently, A.D.A. JILL OZIEMBLEWSKI, P.O. DUDLEY EWALD and MELODY APCHECO testified to a Grand Jury in the County of Kings to an completely different Order of Protection...The People (A.D.A. OZIEMBLEWSKI) violated C.P.L. § 100.15, 180.10, 140.20 & 42 U.S.C. § 1983, In that the Plaintiff was never arraigned with the Temporary Order of Protection (Ind.#3930/2006) that the People submitted to a Kings County Grand Jury, without an Criminal Court Arraignment Judge ever inspecting the Temporary Order in question even though the Plaintiff was arrested and held for Grand Jury action on Felony Complaint #2007KN091364.

STATEMENT OF CLAIMS

CONT.-Pg.-# _____

4. A.D.A. JILL OZIEMBLEWSKI, in submitting an Temporary Order of Protection, without informing the Grand Jury, from a case that was dismissed Pursuant to C.P.L. § 30.30(1)(a) violated the dicta of STARE DECISIS, in that, SEE: PEOPLE V. BLEAU, 718-N.Y.S.2nd.,453, 276 A.D.2nd. 131, to gain Indictment # 12111/2007 with Felony Criminal charges which stemmed from Kings County Indictment # 3930/2006...and she is guilty of instituting an malicious prosecution...C.P.L. § 30.30(1)(a); 42 U.S.C. § 1983; GOLUB V. CITY OF NEW YORK, 334 F. Suoo. 2nd. 399 (S.D.N.Y.-2004).

5. The Plaintiff on FEBURARY 10,2009, sent letters of formal Complaint to both the Supervisor of the Kings County Domestic Violence Unit in care of: A.D.A. BIALO'-PADIN and MR. CHARLES HYNES of the KINGS COUNTY D.A.'S Office. To make both parties aware of the misconduct occuring in thier office with respect to thier employee's and offered to make myself available to either of them to rectify the situation... I have to date received no response from either above-named individuals.

STATEMENT OF CLAIMS

CONT.-#6

The Plaintiff is currently in the care and custody of The N.Y.S. D.O.C.S. Pursuant to a mandate that was issued, with regards to Kings County Indictment # 12111/2007, To wit, upon a guilty verdict by Kings County J.S.C. ALAN MARRUS of: CRIMINAL CONTEMPT- IN THE 1st. DEGREE, SUB.-B, V (P.L. § 215.51 [B][V]).

This verdict is at direct odd's with the Statute, as I was found not guilty of the underlying charge, to wit, HARASSMENT IN THE SECOND DEGREE (P.L. § 240.26[1]) and I was also acquitted of the ASSUALT. Thus I am currently incarcerated for punishment for a "Crime" that I was acquitted of...SEE: P.L. § 10.00, SUB.'S #1,(OFFENSE), #4,(MISDEMEANER), #5,(FELONY) & #6,(CRIME).

I have Committed non of these, and as such, my incarceration is unwarranted, illegal and a violation of my FEDERAL & STATE CONSTITUTIONAL RIGHTS...SEE ALSO: P.L. § 251.51-(B)(V); PRACTICE COMMENTARY.

IV.

If you are claiming injuries as a result of the events that you are complaining about, describe your injuries and state what medical treatment that your required. Was medical treatment received.?:
The Claimant sufferes from sever depreeion and is currently receiving Counseling and treatment.

V. RELIEF:

STATE WHAT RELIEF YOU ARE SEEKING IF YOU PREVAIL ON YOUR COMPLIANT.

Claimant seeks the following relief from each Defendant in thier Official- and Individual Capacities, in the forms of relief for monetary and compensatory damages caused by the Defendants: Past, Present & Future Pain and suffering: THREE MILLION, FIVE HUNDRED THOUSAND DOLLARS (3.5. Million), For mental Anguish: The Plaintiff seeks: ONE MILLION, FIVE HUNDREED-thousand dollars (1.5 Million Dollars)

Expenses paid by the Claimant to proceed and respond to the Civil Proceedings, such as; Copies, postage, certifoed mail, notaries, typing machine and time & fair wages for said typing, stationary productes, and any and all Attorney Fees: FIFTEEN THOUSAND DOLLARS (\$ 15,000) and/or any excess thereof for said exspenses, Declatory Damages: ONE DOLLAR (\$ 1.00), Punative Damages: ONE DOLLAR (\$ 1.00).

I declare under penalty of perjury, that on AUGUST ____, 2010, that I delivered this Complaint to the Prison authorities to be mailed to the United States District Court- for the Eastern District of New York.

Signed this ____ day of AUGUST, 2010, I declare under penalty of perjury that the foregoing is true and correct.

LEROY WHITLEY, PLAINTIFF
#09-A-2462, LIVINGSTON-
CORR. FAC., P.O. BOX-
91, SONYEA, N.Y., 14556

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LEROY WHITLEY, #09-A-2462,
PLAINTIFF,

AFFIRMATION OF SERVICE
08-CV-4202(RRM)(LB)

-against-

P.O. DUDLEY EWALD, N.Y.P.D., 70th., Pct.,
A.D.A. JILL OZIEMBLEWSKI, KINGS COUNTY D.A.'S OFFICE,
A.D.A. KERRY PUCKHABER, KINGS COUNTY D.A.'S OFFICE,
A.D.A. BIALO' PADIN, KINGS COUNTY D.A.'S OFFICE,
CHARLES HYNES, DISTRICT ATTORNEY OF KINGS COUNTY,
et. alii., ALL OTHERS ACTING IN CONCERT,
DEFENDANTS.

I, LEROY WHITLEY, #09-A-2462, declare under penalty of perjury that I have served a copy of the attached: CIVIL RIGHTS (AMENDED) COMPLAINT § 1983, upon;
P.O. DUDLEY EWALD, SHIELD #17310, of the N.Y.P.D., 70th. Pct. located at:
154-LAWRENCE AVE., BROOKLYN, N.Y., 11230

2- SCHLOMIT AROUBAS, ESQ., The City of New York, Law Department, located at:
100-CHUGH STREET, NEW YORK, N.Y., 10007
Church

3- All of the following were served at the Kings County District Attorney's Office,
located at: 350 JAY STREET, BROOKLYN, N.Y., 11201;

D.A. CHARLES HYNES


A.D.A. JILL OZIEMBLEWSKI

A.D.A. KERRY HUCKHABER

A.D.A. BIALO' PADIN

DATED: AUGUST 04, 2010

RESPECTFULLY


LEROY WHITLEY, #09-A-2462
PLAINTIFF, LIVINGSTON CORR.-
FAC., P.O. BOX-91, SONYEA,
N.Y., 14556